

**IN THE HIGH COURT OF UTTARANCHAL,
AT NAINITAL.
S.A. No. 397/2001
(Old No. 1162/2000)**

1- Shyam Singh S/o Kalyan Singh,
2- Nain Singh S/o Bhan Singh,
Both R/o Village Burakot, Patti hinsariakhal
For self and as representatives of all the
Residents of Village Burakot, Patti Hinsariakhal,
Tehri Garhwal ..Plaintiffs/Appellants.

Vs.

1- Bhagwan Singh S/o Shiv Singh,
2- Mohan Singh S/o Gainu Singh,
Residents of Village Tyargaon,
for themselves and as representatives of Village
Tyargaon, Patti, Hinsariakhal,
District Tehri Garhwal ..Defendants/Respondents.

Sri V.K. Bisht, Senior Advocate, for the appellants.

(Hon'ble B.C. Kandpal, J.)

This is plaintiffs second appeal, U/S 100 C.P.C., filed against the judgment and decree dated 6-6-2000 passed by the then District Judge, Tehri Garhwal, in civil appeal No. 3 of 1998, Shyam Singh and another Vs. Bhagwan Singh and another, whereby the appeal was dismissed and the judgment and decree dated 21.4.1998 passed by the then civil Judge (J.D.) new Tehri in O.S. No. 26/1994, Shyam Singh Vs. Bhagwan Singh, was affirmed.

2- The plaintiffs/appellants filed a suit for permanent injunction against the defendants/respondents for restraining them from interfering with the boundaries of villages Burakot and Tyargaon of the parties respectively. According to the plaintiffs/appellants in the last settlement boundary has been shown by banjar land Khasra Nos. 345, 475, 545, 359 belonging to the Government and also by Tyuragad Gadhera. In the year 1986 the Forest department started the work of afforestation on a part of this banjar land and the village people of the defendants raised hindrance to it on the ground that they have right of grazing cattle on this land. Proceedings U/s 145 Cr.P.C.

were also drawn between the parties and the disputed land was attached by the court. On the motion of defendants, Collector Tehri ordered for re-demarcation of the boundary in revenue suit No. 15/1993, hence the suit was filed for permanent injunction.

3- The defendants/respondents raised objection that the only court to hear the boundary dispute, is revenue court and the civil court has no jurisdiction to hear such disputes. The Collector had rightly ordered for re-demarcation of the boundary.

4- The defendants did not appear before the trial court and the suit was heard and decided ex parte. The Civil Judge (J.D.) dismissed the suit holding that boundary disputes are to be decided by the revenue courts and not by the civil courts.

5- Feeling aggrieved, the plaintiffs preferred appear before the District Judge, Tehri Garhwal, which was dismissed by the impugned judgment and decree dated 6-6-2000.

6- Thereafter, the plaintiffs/appellants have preferred this second appeal before the Allahabad High Court, which has been transferred to this court, after creation of new State.

7- Heard learned counsel for the appellants and perused the record.

8- Perusal of the record shows that boundary dispute between two villages is involved in the present case. The defendants/respondents filed revenue case No. 15/1993, U/S 41 of the U.P. Land Revenue Act, before the collector and the Collector passed orders for re-demarcation of the boundary. Against the order passed by the Collector, there is provision of appeal before the Commissioner. Unless the order is expressly made final, the suit was not maintainable in the civil court.

9- Perusal of the judgments of both the courts below, reveal that both the courts below have recorded concurrent finding of fact with

Regard to the maintainability of the suit before the civil court and I do not find any illegality or incorrectness in it. I also find that no substantial question of law is involved in this second appeal.

10- Accordingly the second appeal is dismissed in limine.

(B.C. Kandpal, J.)

Dated: 22-11-2006

ISB